

Message Text

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ORIGIN OPIC-06

INFO OCT-01 NEA-10 ISO-00 L-03 AID-05 CIAE-00 COME-00

EB-07 FRB-03 INR-07 NSAE-00 USIA-06 TRSE-00 XMB-02

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L/T:WMMCQUADE

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FM SECSTATE WASHDC

TO AMEMBASSY MANAMA

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E.O. 11652: N/A

TAGS: EINV

SUBJECT: OPIC INVESTMENT INCENTIVE AGREEMENT

REF: (A) MANAMA 0617 (B) STATE 044749
(C) STATE 208300

1. EXPLANATION OF BAHARNA'S TWO POINTS IS AS FOLLOWS:

(A) PRIOR TO 1969, THE GOVERNING STATUTE OF OPIC'S
PREDECESSOR AGENCIES SPOKE ONLY OF "GUARANTIES", TWO KINDS
OF GUARANTIES WERE AUTHORIZED: ALL-RISK GUARANTIES, AND
SPECIFIC RISK (I.E., POLITICAL RISK) GUARANTIES. IN 1969,
THE STATUTE TRANSFERRING THE PROGRAMS TO OPIC CHANGED THE
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TERMINOLOGY SO AS TO USE THE PHRASE "INVESTMENT INSURANCE"

FOR WHAT HAD PREVIOUSLY BEEN CALLED "SPECIFIC RISK GUARANTIES". AS A RESULT OF THIS CHANGE IN TERMINOLOGY, BILATERALS EXECUTED SINCE THAT TIME HAVE USED THE PHRASE "INSURANCE OR GUARANTIES" TO REFER TO WHAT WAS FORMERLY INCLUDED WITHIN THE WORD "GUARANTIES".

(B) BILATERALS EXECUTED IN RECENT YEARS HAVE SPOKEN OF MAKING LOCAL CURRENCY ARISING FROM INCONVERTIBILITY TRANSFERS AVAILABLE TO THE ISSUING GOVERNMENT FOR ITS

"USE" IN THE TERRITORY OF THE HOST GOVERNMENT. SOME EARLIER AGREEMENTS HAVE REFERRED TO "EXPENDITURE" RATHER THAN "USE". ALTHOUGH USG DOES NOT CONSIDER "EXPENDITURE" TO HAVE A MORE LIMITED MEANING IN THIS CONTEXT, WE BELIEVE THE TERM "USE" BETTER CONVEYS THE INTENT TO COVER ALL OFFICIAL DISBURSEMENTS, INCLUDING SOME (SUCH AS ACCOMMODATION EXCHANGE FOR EMBASSY STAFF) WHICH ARE NOT ADMINISTRATIVE EXPENSES.

2. PROCEDURE SUGGESTED PARAGRAPH 3 REF A SEEMS LIKE GOOD ONE, AND YOU MAY USE ABOVE EXPLANATION AS YOU SEE FIT.

3. FOR CONVENIENCE FOLLOWING IS RESTATED TEXT OF AGREEMENT AS AUTHORIZED REFS (B) AND (C):

BEGIN UNCLASSIFIED TEXT

EXCELLENCY:

I HAVE THE HONOR TO REFER TO CONVERSATIONS WHICH HAVE RECENTLY TAKEN PLACE BETWEEN REPRESENTATIVES OF OUR TWO GOVERNMENTS RELATING TO INVESTMENTS IN BAHRAIN WHICH PROMOTE THE DEVELOPMENT OF THE ECONOMIC RESOURCES AND PRODUCTIVE CAPACITIES OF BAHRAIN AND TO INSURANCE AND GUARANTIES OF SUCH INVESTMENTS ISSUED AS AN INCENTIVE BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA. I ALSO HAVE THE HONOR TO CONFIRM THE FOLLOWING UNDERSTANDINGS REACHED AS A RESULT OF THOSE CONVERSATIONS.

1. WHEN AN INVESTOR PROPOSES TO INVEST IN A PROJECT OR LIMITED OFFICIAL USE

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ACTIVITY WITHIN BAHRAIN, WITH THE ASSISTANCE OF INSURANCE OR GUARANTIES (HEREINAFTER REFERRED TO AS "COVERAGE") ISSUED PURSUANT TO THIS AGREEMENT BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA, THE GOVERNMENT OF THE UNITED STATES OF AMERICA (THE ISSUING GOVERNMENT) AND THE GOVERNMENT OF BAHRAIN (THE HOST GOVERNMENT) SHALL, UPON THE REQUEST OF EITHER, CONSULT RESPECTING THE NATURE OF THE PROJECT OR ACTIVITY.

2. COVERAGES SHALL NOT BE ENTITLED TO THE BENEFITS OF THIS AGREEMENT UNLESS THE HOST GOVERNMENT APPROVES THE PROJECT OR ACTIVITY TO WHICH THE INVESTMENT RELATES AND AGREES THAT THE ISSUING GOVERNMENT MAY ISSUE COVERAGE IN RESPECT THEREOF.

3. IF THE ISSUING GOVERNMENT MAKES PAYMENT TO ANY INVESTOR UNDER COVERAGE ISSUED PURSUANT TO THIS AGREEMENT, THE HOST GOVERNMENT SHALL RECOGNIZE THE TRANSFER TO THE ISSUING GOVERNMENT OF ANY CURRENCY, CREDITS, ASSETS, OR INVESTMENT ON ACCOUNT OF WHICH PAYMENT UNDER SUCH COVERAGE IS MADE AS WELL AS THE SUCCESSION OF THE ISSUING GOVERNMENT TO ANY RIGHT, TITLE, CLAIM, PRIVILEGE OR CAUSE OF ACTION EXISTING, OR WHICH MAY ARISE, IN CONNECTION THEREWITH.

4. AMOUNTS IN THE LAWFUL CURRENCY OF THE HOST GOVERNMENT AND CREDITS THEREOF ACQUIRED BY THE ISSUING GOVERNMENT UNDER COVERAGE ISSUED PURSUANT TO THIS AGREEMENT SHALL BE ACCORDED TREATMENT NO LESS FAVORABLE THAN THAT ACCORDED TO FUNDS OF NATIONALS OF THE UNITED STATES OF AMERICA, DERIVING FROM INVESTMENT ACTIVITIES LIKE THOSE IN WHICH THE INVESTOR HAS BEEN ENGAGED, AND SUCH AMOUNTS AND CREDITS SHALL BE FREELY AVAILABLE TO THE ISSUING GOVERNMENT FOR ITS USE IN THE TERRITORY OF THE HOST GOVERNMENT.

5. (A) DIFFERENCES BETWEEN THE TWO GOVERNMENTS CONCERNING THE INTERPRETATION OF THE PROVISIONS OF THIS AGREEMENT SHALL BE RESOLVED, INsofar AS POSSIBLE, THROUGH NEGOTIATIONS BETWEEN THE TWO GOVERNMENTS. IF ANY SUCH DIFFERENCE CANNOT BE RESOLVED WITHIN A PERIOD OF THREE MONTHS LIMITED OFFICIAL USE

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FOLLOWING THE REQUEST FOR SUCH NEGOTIATIONS, IT SHALL BE SUBMITTED, AT THE REQUEST OF EITHER GOVERNMENT, TO AN ARBITRATOR FOR RESOLUTION IN ACCORDANCE WITH PARAGRAPH 5(B).

(B) ANY CLAIM AGAINST THE HOST GOVERNMENT WHICH ARISES OUT OF ANY INVESTMENT OR INTEREST THEREIN IN RESPECT OF WHICH COVERAGE HAS BEEN ISSUED IN ACCORDANCE WITH THIS AGREEMENT AND WHICH, IN THE OPINION OF EITHER GOVERNMENT, PRESENTS A QUESTION OF PUBLIC INTERNATIONAL LAW, OR ANY DIFFERENCES REFERRED TO IN PARAGRAPH 5(A), SHALL, AT THE REQUEST OF EITHER GOVERNMENT, BE SUBMITTED TO DIRECT NEGOTIATIONS BETWEEN THE TWO GOVERNMENTS. IF WITHIN A PERIOD OF THREE MONTHS FOLLOWING THE REQUEST FOR NEGOTIATIONS, THEY ARE UNABLE TO SETTLE THE CLAIM OR

DIFFERENCE BY AGREEMENT, IT SHALL, AT THE REQUEST OF
EITHER GOVERNMENT, BE REFERRED FOR FINAL AND BINDING
DECISION TO A SOLE ARBITRATOR SELECTED BY MUTUAL AGREE-
MENT. IF THE GOVERNMENTS ARE UNABLE, WITHIN A PERIOD OF
THREE MONTHS FOLLOWING SUCH REQUEST, TO AGREE UPON AN
ARBITRATOR, THE ARBITRATOR SHALL, AT THE REQUEST OF EITHER
GOVERNMENT, BE DESIGNED BY THE PRESIDENT OF THE INTER-
NATIONAL COURT OF JUSTICE, OR, IF HE IS A NATIONAL OF
EITHER GOVERNMENT, BY THE SENIOR MEMBER OF THE COURT NOT
HAVING THE NATIONALITY OF EITHER GOVERNMENT. THE
EXPENSES OF THE ARBITRATOR AND THE OTHER COSTS SHALL BE

PAID IN EQUAL PARTS BY THE TWO GOVERNMENTS. THE ARBITRA-
TOR SHALL BASE HIS DECISION ON THE APPLICABLE PRINCI-
PLES AND RULES OF PUBLIC INTERNATIONAL LAW.

6. THIS AGREEMENT SHALL CONTINUE IN FORCE UNTIL SIX
MONTHS FROM THE DATE OF RECEIPT OF A NOTE BY WHICH ONE
GOVERNMENT INFORMS THE OTHER OF AN INTENT NO LONGER TO BE
A PARTY TO THE AGREEMENT. IN SUCH EVENT, THE PROVISIONS
OF THE AGREEMENT WITH RESPECT TO COVERAGE ISSUED WHILE
THE AGREEMENT WAS IN FORCE SHALL REMAIN IN FORCE FOR
THE DURATION OF SUCH COVERAGE, BUT IN NO EVENT LONGER
THAN TWENTY YEARS AFTER DENUNCIATION OF THE AGREEMENT.

UPON RECEIPT OF A NOTE FROM YOUR EXCELLENCY INDICATING
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THAT THE FOREGOING PROVISIONS ARE ACCEPTABLE TO THE
GOVERNMENT OF BAHRAIN, THE GOVERNMENT OF THE UNITED
STATES OF AMERICA WILL CONSIDER THAT THIS NOTE AND YOUR
REPLY THERETO CONSTITUTE AN AGREEMENT BETWEEN OUR TWO
GOVERNMENTS ON THIS SUBJECT, THE AGREEMENT TO ENTER
INTO FORCE ON THE DATE OF YOUR NOTE IN REPLY.

ACCEPT, EXCELLENCY, THE RENEWED ASSURANCES OF MY HIGHEST
CONSIDERATION. DECONTROL ONE YEAR FROM DATE. KISSINGER

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